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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) WT Docket No. 97-82
Rules Regarding Installment Payment)
Financing for Personal)
Communications Services (PCS))
Licensees)

Reply Comments of AirGate Wireless, L.L.C.

AirGate Wireless, L.L.C. ("AirGate") hereby submits its reply comments in response to comments filed on the Further Notice of Proposed Rulemaking adopted by the Commission in the above-captioned proceeding. As an entrepreneurial company that participated in the C block and the D, E and F block broadband PCS auctions, AirGate encourages the Commission to retain its commitment to diversity in licensing as required by Section 309(j) of the Communications Act. The comments filed in this proceeding demonstrate that this commitment best can be achieved by auctioning all C block licenses simultaneously to entrepreneurs without dramatic changes to the governing rules.¹

AirGate's reply comments are limited to the following four issues:

1. Carolina PCS I Limited Partnership's ("CPCSI") desperate plea for an individual exemption from its default on the 10% downpayment for all the C block licenses in the State of South Carolina;
2. The continued need for limited installment payments;
3. The appropriate basis for a minimum opening bid, if any; and
4. The need to establish the eligibility for bidding credits.

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¹ AirGate strongly opposes the suggestion by Nextel Communications, Inc. that the Commission rescind designation of the C block as an entrepreneurs block. See Comments of Nextel Communications, Inc.

I. The Commission Should Include All Defaulted C Block Licenses in the Auction

AirGate and other commenting parties support the simultaneous auction of all available PCS C block spectrum as the most efficient means of allocating C block spectrum that remains unlicensed or is returned to the Commission.² This must include spectrum that remains unlicensed due to bidder defaults on the required down payment. In its comments, CPCSI seeks to have the Commission exclude from the reauction all licenses for which it was the high bidder in the C block auction.³ CPCSI was the final, high bidder for all C block licenses in the BTAs in the State of South Carolina. Due to its default on the required down payment, today, more than one and a half years after the auction closed, the C block PCS licenses for the entire state remain unlicensed. The basis for CPCSI's request for individual relief is the pending status of its Application for Review of the order denying CPCSI a waiver of the required 10% down payment for its licenses.⁴ AirGate encourages the Commission to rule on CPCSI's Application for Review in sufficient time for the licenses to be included in the reauction.

II. Limited Installment Payments Remain Important

Comments filed by parties in this proceeding demonstrate the importance of installment payments for entrepreneurs that intend to bid in the reauction as well as to the stability for C block licensees that have honored their financial commitments to the government. In their comments, several C block licensees point to the domino effect that elimination of installment

² See Comments of Omnipoint Corporation at 4.

³ See Comments of Carolina PCS I Limited Partnership at 2, 9.

⁴ Denial of the waiver is not effected by the Second Report and Order in this proceeding. The Commission has denied similar waiver requests. See Mountain Solutions LTD, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market Nos. B053, B168, B172, B187, B188, B224, B247, B275, B366, and B381, Order, 12 FCC Rcd 5904 (1997) (application for review filed May 28, 1997 pending); C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, Order, 11 FCC Rcd 9343 (1996); BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd 3230 (1997), petition for reconsideration granted in part and denied in part, Memorandum Opinion and Order, FCC 97-300 (rel. Sept. 29, 1997).

payments for the reauction will have on their current licensed operations. DigiPH PCS, Inc. (“DigiPH”), a C block licensee, contends the elimination of installment payments will severely impact current licensees that have met their obligations and are ready to launch their service.⁵ Alpine PCS, Inc. similarly notes the continued need and value of installment payments for true small businesses:

[t]rue small business entrepreneurs, especially ones who bid in the first C block auction, should not – now that defaulting bidders are out of the way – have the terms changed for them.⁶

An all cash auction will have dramatic effects on current licensees, auction participants and potentially diversity in licensing. Accordingly, the Commission should evaluate all the alternatives, including more limited installment payments as offered in the F block PCS auction, before discarding all installment payments.

III. A Minimum Opening Bid Should Not be Tied to the C Block

The comments do not support imposition of a minimum opening bid pegged to the C block auction prices as proposed by the Commission in the Further Notice. The comments reflect AirGate’s concern that use of the C block prices will set artificially high opening minimum bids. Cook Inlet opposes a minimum opening bid.⁷ If a minimum opening bid is required by the Commission, Cook Inlet suggests use of the upfront payment as the minimum opening bid.⁸ Omnipoint also opposes a minimum opening bid. Omnipoint cites the potential interference with the efficient allocation of licenses if a minimum opening bid is established.⁹ If

⁵ See Comments of DigiPH PCS, Inc. at 2

⁶ Comments of Alpine PCS, Inc. at 5.

⁷ Comments of Cook Inlet Region, Inc. at 10-12

⁸ Id. at 12.

⁹ Comments of Omnipoint at 5.

a minimum opening bid is required, Omnipoint proposes a flat \$0.10/Pop.¹⁰ As AirGate's proposal for a minimum opening bid at 10% of the final F block price and the comments of other parties demonstrate, the adoption of methodology for the minimum bid carries the inherent risk of being set too high and above "market". AirGate encourages the Commission not to adopt a minimum opening bid or to adopt one of the proposals by AirGate, Cook Inlet or Omnipoint to minimize the interference with market forces.¹¹

IV. Eligibility for Bidding Credits Should Be Established At the Time of Auction

In its comments, AirGate suggested that the Commission specify that eligibility for bidding credits will be determined at the time of the short form filing for the reauction. Other parties seek to grandfather bidders' eligibility for bidding credits at the time of the initial C block auction.¹² While such grandfathering to participate in the auction may be appropriate, such an approach is not warranted for eligibility for bidding credits. Tiered bidding credits recognize in a current context, the degree of difficulty in accessing capital as it directly relates to an entity's size. Companies that have been able to tap the equity and debt markets since the C block auction and have grown beyond the size of small or very small businesses have demonstrated their strength and ability to access capital. Companies of a smaller size face a different hurdle. In addition, if grandfathering is permitted for bidding credits it is likely that all the bidders will qualify as "very small businesses" thereby nullifying the intended effect of a tiered bidding credit. Accordingly, it is appropriate and reasonable for the Commission to evaluate eligibility for bidding credits at the time of the short form filing.

¹⁰ Id. at 6.

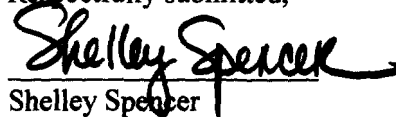
¹¹ AirGate further encourages the Commission to set the upfront payment at \$0.02 Per MHz/Pop as advocated in its initial comments.

¹² Comments of Omnipoint at 3.

V. Conclusion

AirGate encourages the Commission to move quickly to a simultaneous reauction of all C block spectrum including spectrum that remains unlicensed due to bidder defaults. In fulfillment of the statutory mandate for a wide dissemination of licenses in Section 309(j), AirGate encourages the Commission to retain the designation of the block as an entrepreneurs' block with market established prices (without a minimum opening bid), upfront payments that will maximize participation, reasonable installment payments and eligibility for bidding credits determined at the time of the short form filings.

Respectfully submitted,

A handwritten signature in black ink that reads "Shelley Spencer". The signature is written in a cursive, flowing style.

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Dated: November 24, 1997

CERTIFICATE OF SERVICE

I, Shelley Spencer, hereby certify that a copy of the foregoing Reply Comments of AirGate Wireless were sent this 24th day of November, 1997, first class mail postage pre-paid to the following:

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